



## **IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

**NOS. WR-50,961-08, WR-50,961-09**

**EX PARTE RODNEY REED, Applicant**

**ON APPLICATIONS FOR POST-CONVICTION WRIT OF HABEAS CORPUS  
FROM CAUSE NO. 8701 IN THE 21ST JUDICIAL DISTRICT COURT  
OF BASTROP COUNTY**

***Per curiam.* Newell, J., not participating.**

### **ORDER**

We have before us subsequent applications for writs of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071 § 5.<sup>1</sup> In May of 1998, a jury convicted Rodney Reed (applicant) of the capital murder of Stacey Stites. The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set applicant's punishment at death. This Court affirmed

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<sup>1</sup> Unless otherwise indicated all references to articles refer to the Code of Criminal Procedure.

applicant's conviction and sentence on direct appeal. *Reed v. State*, No. AP-73,135 (Tex. Crim. App. Dec. 6, 2000) (not designated for publication).

In 1999, applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court. In 2001, applicant filed his "Supplemental Claim for Relief on Application for Writ of Habeas Corpus" in the convicting court.<sup>2</sup> This Court subsequently denied applicant relief on his initial application and dismissed the subsequent application pursuant to Article 11.071 § 5. *Id.* Applicant filed his second subsequent habeas application in the convicting court on March 29, 2005. This Court dismissed some of the claims in that application as an abuse of the writ under Article 11.071 § 5, but remanded the case to the trial court for the development of two of applicant's claims. *Ex parte Reed*, No. WR-50,961-03 (Tex. Crim. App. Oct. 19, 2005) (not designated for publication). After the convicting court returned the case to this Court, we issued an opinion denying relief. *Ex parte Reed*, 271 S.W.3d 698, 751 (Tex. Crim. App. 2008).

Applicant filed three more subsequent writ applications, none of which satisfied the requirements of Article 11.071 § 5, and this Court dismissed each of them as an abuse of the writ. *Ex parte Reed*, Nos. WR-50,961-04 & WR-50,961-05 (Tex. Crim. App. Jan. 14, 2009) (not designated for publication) and *Ex parte Reed*, No. WR-50,961-06 (Tex.

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<sup>2</sup> The Court construed applicant's "Supplemental Claim" as a subsequent application. *Ex parte Reed*, Nos. WR-50,961-01 and WR-50,961-02 (Tex. Crim. App. Feb. 13, 2002) (not designated for publication).

Crim. App. July 1, 2009) (not designated for publication).

Applicant filed his sixth subsequent application (No. WR-50,961-07) in the trial court on February 13, 2015, and he filed a document titled “Supplemental Application for Writ of Habeas Corpus” (No. WR-50,961-08) on June 9, 2016. In his -07 application, applicant asserted that he had newly discovered evidence that supported his claim that he is actually innocent and that new scientific evidence entitled him to a new trial pursuant to Article 11.073. Applicant also argued that the State presented false, misleading, and scientifically invalid expert testimony in violation of his right to due process. *See Ex parte Chabot*, 300 S.W.3d 768, 770-71 (Tex. Crim. App. 2009). In a fourth allegation, applicant asserted that we should reconsider his previous writ applications in light of this new evidence. In his -08 application, applicant asserted that he had newly discovered evidence that supported his claim that he is actually innocent, that the State’s failure to disclose this newly discovered evidence violated his due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963), and that this newly discovered evidence showed that the State presented false and misleading testimony, which violated his right to due process. *See Chabot*, 300 S.W.3d at 770-71.

In 2015, we ordered that applicant’s execution be stayed pending further order of the Court. *Ex parte Reed*, No. WR-50,961-07 (Tex. Crim. App. February 23, 2015) (not designated for publication). On May 17, 2017, this Court found that applicant’s -07 application failed to satisfy any of the exceptions provided in Article 11.071 § 5, and

failed to make the requisite showing under Article 11.073. *Ex parte Reed*, Nos. WR-50,961-07 & WR-50,961-08, slip op. at 3 (Tex. Crim. App. May 17, 2017) (not designated for publication). We dismissed the -07 application as an abuse of the writ without reviewing the merits of the claims and refused to reconsider applicant's prior writ applications. *Id.*

Also in the May 2017 order, we found that applicant failed to make a *prima facie* showing of actual innocence in his -08 application. *Id.* However, we found that applicant's *Brady* and false testimony claims (his second and third grounds for relief in his -08 application) satisfied the requirements of Article 11.071 § 5. *Id.* These claims were based on statements made to a CNN interviewer by Curtis Davis, a law enforcement officer and close friend of Stacey Stites's fiancé, Jimmy Fennell. Davis told the interviewer about statements that Fennell allegedly made to him in 1996 on the morning after the murder about Fennell's activities and whereabouts the previous evening. These statements appeared to be inconsistent with Fennell's trial testimony.

The trial court held an evidentiary hearing in October 2017. Applicant called five witnesses to the stand, including Davis. The State called five witnesses, including Stites's mother. At the hearing, Davis conceded that many of his answers to the interviewer's questions had been based on assumptions and he had trouble remembering some of Fennell's statements. Stites's mother also gave testimony inconsistent with applicant's claims. The trial judge signed findings of fact and conclusions of law on

January 5, 2018, recommending that applicant's grounds two and three be denied.

We have reviewed the evidence in the writ record, the testimony at the writ hearing, the habeas court's findings of fact and conclusions of law, and relevant portions of the direct appeal record. Based on our review of the record, with regard to the remanded grounds in applicant's -08 subsequent application, we deny the relief sought. We dismiss any other grounds applicant raised in his -08 application as an abuse of the writ for failure to satisfy Article 11.071 § 5.

In June 2018, applicant filed another document titled "Supplemental Application for Writ of Habeas Corpus." This 2018 application constitutes applicant's eighth subsequent application (No. WR-50,961-09) pursuant to Article 11.071 § 5(a). In this -09 application, applicant asserts that the scientific experts' opinions that the State relied on to convict him were "false when given and have since been changed." In support, applicant cites Article 11.073, due process principles, and actual innocence law. Applicant has not shown that his "current claims and issues" in his 2018 application were not or could not have been presented in a previous application because the factual or legal basis for the claim was unavailable on the date he filed the previous application. *See* Article 11.071 § 5(a)(1). In fact, applicant previously presented one of his current exhibits, a 2012 declaration authored by the State's medical examiner, Dr. Roberto Bayardo, as a basis for a substantially similar false evidence ground raised in his -07 writ application. Nor has applicant shown "by a preponderance of the evidence, [that] but for

a violation of the United States Constitution no rational juror could have found [him] guilty beyond a reasonable doubt.” *Id.* at § 5(a)(2). Consequently, we dismiss applicant’s -09 application as an abuse of the writ for failure to satisfy Article 11.071 § 5.

IT IS SO ORDERED THIS THE 26<sup>TH</sup> DAY OF JUNE, 2019.

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